

HOUSE BILL 3159
By Bragg

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4,
relative to privilege taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, Part 5, is amended by
adding the following new section:

Section _____. (a) On all transfers of realty, whether by deed, court deed, decree, partition
deed, or other instrument evidencing transfer of any interest in real estate, counties are
authorized to levy, by resolution of the county legislative body, a tax for the privilege of having
the same recorded, for county purposes only, of thirty-seven cents (37¢) per one hundred
dollars (\$100), or major fraction thereof, as follows:

(1) On the transfer of a freehold estate, the tax shall be based on the consideration for
the transfer, or the value of the property, whichever is greater. "Value of the property," as
used in this section, means the amount which the property transferred would command
at a fair and voluntary sale, and no other value;

(2) No transfer tax shall be due or paid on the transfer of a leasehold estate;

(3) No such tax shall be levied on the transfer of any real estate where such is:

(A) Creation or dissolution of tenancy by the entirety by the conveyance from one

(1) spouse to the other, or by the conveyance from one (1) spouse or both
spouses to a trustee and immediate reconveyance by the trustee in that same
instrument to the original grantor or grantors therein and the original grantor's

spouse as tenants by the entirety or as tenants in common, or the abolition of an estate by the entirety by conveyance by one (1) spouse to the other;

(B) Deeds of division in kind of realty formerly held by tenants in common;

(C) Release of a life estate to the beneficiaries of the remainder interest;

(D) Deeds executed by an executor to implement a testamentary device;

(E) Domestic settlement decrees and/or domestic decrees and/or deeds which are an adjustment of property rights between divorcing parties; or

(F) Transfers of real estate to a revocable living trust;

(4) In the case of quitclaim deeds, the tax shall be based only on the actual consideration given for that conveyance;

(5) No oath of value shall be required in any transaction that is exempt from tax;

(6) This tax shall be paid by the grantee or transferee of the interest in real estate as shown on the instrument evidencing the transfer of such interest; and it shall be collected by the register of the county in which the instrument is offered for recordation.

(A) The grantee, the grantee's agent, or a trustee acting for the grantee shall be required to state under oath upon the face of the instrument offered for record in the presence of the register, or before an officer authorized to administer oaths, the actual consideration or value, whichever is greater, for the transfer of a freehold estate;

(B) The making under oath of any false statement known to be false respecting the consideration or value of property transferred shall be punishable as perjury;

(C) A person who obtains several deeds or other instruments of conveyance for the same transfer of one and the same tract or parcel of real estate shall pay only one (1) county or municipal tax with respect to such transfer;

(D) The register is forbidden to record the transfer until this tax has been paid;
and

(7) No tax is due under this subsection until the title to the property is transferred by deed.

(b) Counties are authorized to levy, by resolution of the county legislative body, a tax, for county purposes only, on the recordation of any instrument evidencing an indebtedness, including, but not limited to, mortgages, deeds of trust, conditional sales contracts, financing statements contemplated by the Uniform Commercial Code, and liens on personalty, other than on motor vehicles at the rate of eleven and one-half cents (11½¢) on each one hundred dollars (\$100) or major fraction thereof of the indebtedness so evidenced.

(1) The tax shall not be required for the recordation of judgment liens, contractors' liens, subcontractors' liens, furnishers' liens, laborers' liens, mechanics' and materialmen's liens and mortgages or deeds of trust issued under the Home Equity Conversion Act, as compiled in title 47, chapter 30, and which are labeled on the face under the provision of such chapter.

(2) In any case where the consideration or stipulation of indebtedness does not appear on the face of the instrument being offered for record, the recording official shall require a separate statement, to be made under oath, indicating the amount of the indebtedness so secured.

(3) This tax shall be paid to and collected by county registers, the secretary of state, and any other official who may receive any instrument other than for liens on motor vehicles in accordance with the motor vehicle title law of this state, for recordation in accordance with the laws of this state, and registration is forbidden until such tax has been paid.

The secretary of state and other officials shall remit any taxes so collected to the county trustee of the appropriate county.

(4) The incidence of the tax herein provided is declared to be upon the mortgagor, grantor or debtor, evidenced by the instrument offered for recordation. It shall not, however, apply with respect to the first two thousand dollars (\$2,000) of the indebtedness.

(5)

(A) As used herein, "indebtedness" means the principal debt or obligation which is reasonably contemplated by the parties to be included within the terms of the agreement. "Indebtedness" does not include any amount of interest, collection expense (including, but not limited to, attorney's fees and expenses incurred and preserving, protecting, improving, or insuring property which serves as collateral for the indebtedness), or any other amount, other than the principal debt or obligation, for which a debtor becomes liable unless such amount is added to the principal debt or obligation, and is used to calculate additional interest pursuant to refinancing, reamortization, amendment or similar transaction or occurrence.

(B) If the instrument is given to secure the performance by the mortgagor, grantor, debtor or any other person of an obligation other than the payment of a specific sum of money, and a maximum amount secured is not expressed therein, such instrument shall be taxable upon the value of the property covered by the instrument, which value shall be deemed to be the "indebtedness" secured by such instrument for such purposes. Such instrument shall not be recorded unless, at the time of presenting the instrument, there is filed a sworn statement by the owner of the property covered thereby of the value of the property. Such amount shall be the basis of assessing the tax imposed under this item. No subsequent change in the value of the property shall result in the imposition of additional tax.

(C) Every recorded instrument evidencing an indebtedness must contain either on the face of the instrument or in an attached sworn statement the following language: "Maximum principal indebtedness for _____ County recording tax purposes is \$_____." The holder of the indebtedness shall state the amount of the indebtedness, and that amount shall be the basis of assessing the tax imposed by this subsection. Such statement may be relied upon only by the

county register and other officials charged with the collection of taxes and by the receiving official charged with the duty of recordation and collection of tax, and such statement shall not constitute notice of any kind to any other party of the amount of indebtedness secured by the instrument. Notwithstanding the foregoing, an instrument described in subdivision (b)(5)(B) shall instead contain either on the face of the instrument or in an attached sworn statement the following language: "Secures obligation other than payment of specific sum - valuation statement submitted herewith." Notwithstanding any other law to the contrary, an official charged with the collection of the tax imposed by this subsection shall not record any instrument evidencing an indebtedness, unless it contains the statement required by this subdivision (b)(5)(C) and tax is properly paid, based upon the amount contained in that statement or in the valuation statement, as appropriate.

(D) When the instrument being offered for registration, recording, or filing secures, or evidences the securing of, a line of credit or other indebtedness arising from more than one (1) advance or extension of credit, the amount of which will, or may, vary from time to time, the tax shall be computed and paid on the maximum amount of the indebtedness as stated in the instrument or the accompanying sworn statement, and the reduction or subsequent increasing of the amount of the indebtedness within such limits shall not result in additional tax.

(6) Imposition of a transfer tax as levied under subsection (a) with respect to an instrument evidencing an indebtedness shall not operate to exonerate such instrument from the tax levied under this subsection if such tax would otherwise be appropriate. Furthermore, an instrument evidencing transfer of any interest in real estate which is subject to the transfer tax shall, nevertheless, be subject to the tax levied under this subsection also when such instrument evidences an indebtedness either by showing

therein that a vendor's lien is retained, or by referring therein to such a lien being evidenced by another instrument not being offered for public recordation.

(7) Where any part of the property standing as security for the payment of a debt is located part within and part without the county, only such proportion of the amount covered by the instrument shall be taxed as the value of the property within the county bears to the whole property. "Value" means only that value which the property would command at a fair and voluntary sale. No subsequent change in the value of either the property inside or the property outside the state shall result in the imposition of additional tax.

(8) In the event of an increase in the indebtedness beyond the amount stated subsequent to the filing or recordation of the instrument, the holder of the indebtedness shall pay the tax on the amount of the increase. Such a payment shall be due on the date the increase occurs, but may be made without penalty if made within sixty (60) days after the increase occurs. Thereafter, such payment may be made only upon payment of the penalty provided in subdivision (b)(12) based on the amount of the increase in the indebtedness.

(9) The provisions of §§ 67-4-206 and 67-4-217 shall not apply to the tax imposed by this subsection.

(10)

(A) Nonpayment or underpayment of tax on an indebtedness, or failure timely to pay tax on an increase in indebtedness, shall not affect or impair the effectiveness, validity, priority, or enforceability of the security interest or lien created or evidenced by the instrument, it being declared the legislative intent that the effectiveness, validity, priority, and enforceability of security interest and liens are governed solely by law applicable thereto and not by this title.

(B) Such nonpayment, underpayment, or failure to pay, until cured, shall result in the imposition of a tax lien, in the amount of any tax and penalties unpaid and

owing under this subsection, in favor of the county as described in subdivision (b)(11), shall subject the holder of the indebtedness to a penalty as described in subdivision (b)(12), and shall subject the holder of the indebtedness to the disability described in subdivision (b)(13).

(11) The tax lien described in subdivision (b)(10) shall arise at the time the tax is due and shall at that time attach to any property, either real or personal, tangible or intangible, subject to the instrument until:

(A) The lien or security interest of the instrument is released with respect to any property; or

(B) Any property is transferred in settlement or realization of the lien or security interest, whereupon the tax lien shall automatically be released from such property and attach to any proceeds thereof. The county may not levy upon or sell any property subject to the tax lien until notice of the tax lien has been recorded. The tax lien shall be superior to all liens and security interest under Tennessee law except:

- (i) Those enumerated in § 67-1-1403(c)(2)-(4) that were recorded, filed or perfected, respectively, prior to attachment of the tax lien;
- (ii) Liens of the state of Tennessee for taxes or fees or both; and
- (iii) County and municipal ad valorem taxes.

(12) Except as provided in subdivision (b)(8), if the holder of the indebtedness fails to pay or underpays the tax imposed by this subsection, the holder of the indebtedness shall be liable for a penalty, in addition to the tax, in the amount of two hundred fifty dollars (\$250) or double the unpaid tax due, whichever is greater.

(13) The holder of an indebtedness evidenced or secured by an instrument upon the recording or filing of which tax is owing hereunder may not maintain an action on such indebtedness, other than an action limited to the enforcement of the holder's security interest or lien, against the debtor until such nonpayment is cured. If such an action is

commenced and a cure is not effected within a time limit set by the court, the debtor may obtain a dismissal of such action, without prejudice to refiling in the event of a subsequent cure of nonpayment. Notwithstanding the terms of the instrument, if a cure is not effected until after the filing of a motion or pleading in which the holder's noncompliance with this subsection is raised, the holder may not thereafter charge the debtor with the costs of curing such noncompliance.

(c) Any oath required in subsections (a) and (b) shall not be introduced as evidence in any proceeding had in connection with any condemnation action for the purpose of indicating the value of such real property.

(d)

(1) The county register and other officials charged with the collection of taxes imposed under this section shall report all collections on forms prescribed by the county trustee.

(2) For collecting and reporting taxes levied under this section, county registers shall be entitled to retain as commission five percent (5%) of the taxes so collected.

(3) The county registers shall also be entitled to receive as a fee for issuing each receipt for taxes imposed in this section the sum of one dollar (\$1.00), to be paid when the tax receipt is issued. The fee, however, shall not be applicable nor collectible by any state officials charged with the collection of taxes imposed under this section.

(e) Instruments made pursuant to mergers, consolidations, sales or transfers of substantially all of the assets in this state of corporations, pursuant to plans of reorganization, are exempt from this section.

(f)

(1) The recording and rerecording of all transfers of realty in which a municipality is the grantee or transferee and all instruments evidencing an indebtedness in which a municipality is the holder or owner of the indebtedness shall be exempt from this section. The recording and rerecording of all instruments evidencing an indebtedness of any

health and educational facility corporation formed pursuant to title 48, chapter 3, part 3 shall also be exempt from this section.

(2) For the purposes of this subsection (f), "municipality" means the state of Tennessee or any county or incorporated city or town, utility district, school district, power district, sanitary district, or other municipal, quasi-municipal, or governmental body or political subdivision in this state, and any agency, authority, branch, bureau, commission, corporation, department or instrumentality thereof now or hereafter authorized to be created.

(g)

(1) With respect to any "facility" as defined in subdivision (g)(2)(A):

(A) The taxes paid under subsection (a) shall not exceed one hundred thousand dollars (\$100,000) in the aggregate; and

(B) The taxes paid under subsection (b) shall not exceed five hundred thousand dollars (\$500,000) in the aggregate.

(2)

(A) As used in this subsection, "facility" means any real or personal property which is constructed, acquired or developed for the principal purpose of manufacturing, processing, fabricating or assembling any manufactured products and includes, without limitation, all or any part of or any interest in any land and building (including office, administration or other buildings), any improvement thereon and all real and personal properties, including, without limitation, equipment and machinery deemed necessary in connection therewith, whether or not now in existence.

(B) As used in this subsection, "related indebtedness" means indebtedness relating to, or incurred to finance a portion of or otherwise in connection with, a facility, which shall be evidenced by instruments, including, but not limited to, mortgages, deeds of trust, conditional sales contracts, financing statements

contemplated by the Uniform Commercial Code and liens on personalty, notwithstanding the fact that portions of such indebtedness may be held by different holders, owners, trustees or other secured parties ("holders") of indebtedness or portions thereof relating to the facility.

(3) In order to qualify for the exception provided under this subsection, prior to the public recordation of any instrument evidencing a transfer of an interest in realty or of any instrument evidencing a related indebtedness under this section, the grantee or transferee of the interest in such realty or the holder of related indebtedness must submit a sworn statement declaring the amount of tax paid for recording instruments by or on behalf of the person, corporation, or other entity which owns, leases or otherwise operates the facility, hereinafter the "taxpayer," under both subsection (a) with respect to the transfer of realty pertaining to the facility and subsection (b) with respect to related indebtedness, and a copy of each receipt for the taxes paid for recording such instruments or other evidence of such payments. No tax will be due if the taxes paid by or on behalf of the taxpayer for recording such instruments pursuant to subsections (a) and (b) relating to the facility and any related indebtedness equal an aggregate amount of one hundred thousand dollars (\$100,000) or five hundred thousand dollars (\$500,000) as the case may be. If less than the aggregate amount of one hundred thousand dollars (\$100,000) or five hundred thousand dollars (\$500,000), as the case may be, in taxes for recording instruments pursuant to subsections (a) and (b) relating to the facility and any related indebtedness has been paid by or on behalf of the taxpayer prior to the proposed recordation of any instrument evidencing a transfer of an interest in realty or related indebtedness, the grantee or transferee of an interest in such realty or the holder of related indebtedness must pay or cause to be paid the amount of tax due, calculated in accordance with this section, which amount shall be no more than the difference between one hundred thousand dollars (\$100,000) or five hundred thousand dollars (\$500,000), and the aggregate amount of such taxes paid by or on behalf of the taxpayer

for recording instruments pertaining to the facility and any related indebtedness pursuant to subsections (a) and (b). In no event, however, will the aggregate amount of taxes paid for recording instruments relating to transfers of an interest in realty under subsection (a) and related indebtedness under subsection (b) exceed one hundred thousand dollars (\$100,000) or five hundred thousand dollars (\$500,000) by or on behalf of the taxpayer.

(h) All funds collected pursuant to the provisions of this section shall be deposited in the county general fund.

SECTION 2. Tennessee Code Annotated, Section 67-4-409(a), is amended by deleting the language “, for state purposes only,” in the first sentence.

SECTION 3. It is the intention of this act to authorize counties to levy a tax as provided by the provisions of this act in addition to the tax levied by the provisions of Tennessee Code Annotated, Section 67-4-409.

SECTION 4. This act shall take effect on July 1, 1996, the public welfare requiring it.

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